IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 361 OF 2007

IN

CHAMBER SUMMONS NO. 296 OF 2006

IN

SUIT NO. 3320 OF 1985

Reliance Consultancy Services Ltd. ... Appellants

(Orig.Plaintiffs)

Versus

M/s. Metropolitan Investments & Ors. ..Respondents

(Orig.Defendants)

Mr. M.L.Palan i/b. M/s. Dave & Co. for the Appellants.

None for the Respondents.

CORAM: D.K.DESHMUKH &

J.H.BHATIA,JJ.

DATE : 16th July, 2007.

P.C.

1. By this Appeal, the appellants have challenged the order passed by the learned Single Judge rejecting the application made by the plaintiffs-appellants for

exemption from bringing the legal representatives of the deceased defendant No.4 on record. The learned Single Judge has held that the application for exemption from bringing the legal representatives under sub-rule (4) of Rule 4 of Order XXII of the Code of Civil Procedure is maintainable though the suit as against defendant No.4 had abated. The learned Single Judge has held that whether to make an order of exemption under sub-rule (4) of Rule 4 of Order XXII of the C.P.C. or not is in the discretion of the Court. The learned Single Judge, after referring to the facts of the case and also to the conduct of the appellants of first taking steps to make an application to bring the legal representatives of the deceased defendant No.4 on record and thereafter turning around and making the application for exemption, has held that the application is not maintainable. We find that the view taken by the learned Single Judge for not exercising his discretion in favour of the appellants is a possible view. In any case, we find that the order of the learned Single Judge has not resulted in failure of justice.

Therefore, the Appeal cannot be entertained and the same is dismissed.

(D.K.DESHMUKH,J.)

(J.H.BHATIA,J.)